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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**NOVOLUTO GMBH**, a German company,

Plaintiff,

v.

**UCCELLINI INC. D/B/A LORA  
DICARLO**, a Delaware corporation,

Defendant.

Civil Case No.: 6:20-cv-02284-MK

**MOTION FOR ENTRY OF DEFAULT  
AND FOR LEAVE TO MOVE FOR  
DEFAULT JUDGMENT PURSUANT TO  
FED. R. CIV. P. 55(b)(2)**

**MOTION FOR ENTRY OF DEFAULT AND  
FOR LEAVE TO MOVE FOR DEFAULT JUDGMENT**

Plaintiff Novoluto GmbH (“Plaintiff” or “Novoluto”) hereby moves for: (1) entry of default against Defendant Uccellini Inc. d/b/a Lora DiCarlo (“Defendant”) for Defendant’s failure to

MOTION FOR ENTRY OF DEFAULT AND FOR LEAVE TO MOVE FOR DEFAULT  
JUDGMENT PURSUANT TO FED. R. CIV. P. 55(b)(2)

comply with the Court's Order requiring Defendant to obtain new counsel (ECF No. 61), and (2) in the event that Defendant does not seek to set aside the default within seven days after its entry by the clerk, leave to file a motion for default judgment including an award of damages, such motion for default judgment to be filed within fourteen days after Defendant's failure to seek to set aside the default within the allotted time.

This motion is based upon the following points and authorities, records, and files in this action, the Declaration Of Tammy J. Terry In Support Of Motion For Entry Of Default And For Leave To Move For Default Judgment Pursuant To Fed. R. Civ. P. 55(b)(2) ("Terry Decl.") filed herewith, and any oral argument the Court may require.

Statement Regarding LR 55-1, LR 7-1 and LR 83-8

Since the withdrawal of Defendant Uccellini Inc.'s counsel of record in this case, Novoluto has served all papers in this matter on Defendant Uccellini Inc.'s registered agent in Delaware, namely, Unisearch, Inc., 800 North State Street, Suite 403, Dover, DE 19901. Counsel for Novoluto have had no direct communication with any corporate representative of Uccellini Inc., and have been asked by Defendant's former (withdrawn) counsel to refrain from requesting forwarding of communications to Uccellini Inc. Counsel for Novoluto have no additional information regarding contact information for any corporate representative of Defendant Uccellini Inc.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure Rule 55(b)(2), Novoluto submits this Memorandum of Points and Authorities in support of its Motion For Entry Of Default And For Leave To Move For Default Judgment Pursuant To Fed. R. Civ. P. 55(b)(2) against Defendant due to its failure to obtain new counsel within the time specified by the Court, and its continued failure to otherwise defend against Novoluto's claims in this action.

### **II. FACTUAL BACKGROUND**

#### **A. Defendant Has Failed To Comply With The Court's Order Requiring Defendant To Obtain New Counsel**

The Court granted Defendant's counsel's motion to withdraw on January 17, 2023 (ECF No. 61), and ordered Defendant to obtain new counsel within 45 days of that Order, *i.e.*, by March 3, 2023. *Id.* The Court "cautioned [Defendant] that failure to do so may result in an entry of default and default judgment." *Id.* That deadline passed and Defendant failed to obtain new counsel. Terry Decl., ¶¶ 12, 18.

#### **B. Defendant May Not Continue To Be Unrepresented By Counsel**

Defendant may not continue to be unrepresented by counsel in this federal court. L.R. 83-9(b). Defendant has been adequately warned of the potential consequences of its failure to comply with the Court's Order requiring Defendant to obtain new counsel by March 3, 2023. Defendant remains in violation of the Court's Order. ECF No. 61.

#### **C. The Court Should Direct The Clerk To Enter A Default**

Pursuant to Rule 55(b)(2), Fed. R. Civ. P., and this Court's previous Order (ECF No. 61), the Court should direct the clerk to enter a default. In order to proceed stepwise and with all due

caution, the Court should afford Defendant seven (7) days after such entry of default to move to set the default aside; Defendant would necessarily have to obtain new counsel in order to do so.

**D. If Defendant Continues To Defy The Court's Order, The Court Should Entertain Novoluto's Motion For Default Judgment**

Novoluto respectfully requests leave to file a fully and properly supported motion for default judgment, such default judgment including an award of damages for Defendant's infringement of Novoluto's patents, within fourteen (14) days after expiration of the 7-day period afforded Defendant to move to set aside the default. Novoluto and the Court may then proceed with a hearing upon notice as required by Rule 55(b)(2), at the Court's earliest convenience.

**III. CONCLUSION**

If Defendant will not defend and continues to disobey the Court's Order requiring it to obtain new counsel, then it is time to take the steps necessary to conclude the action by default judgment. Novoluto's motion should be granted.

DATED: March 15, 2023

Respectfully submitted,

By: /s/ Peter C. Schechter  
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NOVOLUTO GMBH

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by Federal Express courier on Unisearch, Inc., 800 North State Street, Suite 403, Dover, DE 19901, the Delaware registered agent of Defendant Uccellini Inc., and on counsel of record via the Electronic Case Filing system of the Court, on this 15<sup>th</sup> day of March 2023.

/s/ Peter C. Schechter